

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1160

Introduced by Senator Padilla

February 22, 2012

An act to *amend Section 7904 of, and to repeal and add Section 7907 of, and to repeal and add Section 7904 of, the Public Utilities Code, relating to telecommunications communications.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1160, as amended, Padilla. ~~Telecommunications: intentional Communications: service disruption: interruptions.~~

Existing law provides that an agent, operator, or employee of a telegraph or telephone office who willfully ~~fails~~ *refuses or neglects* to send a message received by the office is guilty of a misdemeanor, as specified. ~~Existing law also provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified. Existing law provides that these requirements are not applicable when payment for charges for transmittal or delivery of the message has not been paid or tendered, for messages counseling, aiding, abetting, or encouraging treason or resistance to lawful authority, to a message calculated to further any fraudulent plan or purpose, to a message instigating or encouraging the perpetration of any unlawful act, or to a message facilitating the escape of any criminal or person accused of crime.~~

~~This bill would repeal those provisions and instead would provide that a person who owns, operates, or controls facilities for providing~~

~~telecommunications service that interconnects with the public switched telephone network shall not intentionally interrupt, suspend, or disconnect service to a particular user or to a geographic area, except as specified retain the provision that the above-described requirements are not applicable when payment for charges for transmittal or delivery of the message has not been paid or tendered, but would delete the other enumerated exceptions.~~

Existing law provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified.

This bill would repeal this provision.

This bill would prohibit a governmental entity, as defined, and a provider of communications service, as defined, acting at the request of a governmental entity, from undertaking to interrupt communications service, as defined, for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as defined, that makes specified findings. The bill would provide that a good faith reliance upon an order of a judicial officer constitutes a complete defense against any action brought as a result of the interruption to communications service as directed by that order.

The bill would also find and declare that it is a matter of statewide concern to ensure that California users of any ~~telecommunications communications service that interconnects with the public switched telephone network~~ not have this service interrupted and thereby be deprived of a means to connect with the state's 911 ~~system in an emergency~~ emergency services or be deprived of a means to engage in constitutionally protected expression.

*Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.*

The people of the State of California do enact as follows:

1 *SECTION 1. Section 7904 of the Public Utilities Code is*
2 *amended to read:*

3 7904. Every agent, operator, or employee of any telegraph or
4 telephone office, who wilfully refuses or neglects to send any

1 message received at such office for transmission, or wilfully
2 postpones the transmission of the message out of its order, or
3 wilfully refuses or neglects to deliver any message received by
4 telegraph or telephone, is guilty of a misdemeanor. Nothing in this
5 section shall be construed to require any message to be received,
6 transmitted or delivered, unless the charges thereon have been paid
7 or tendered, ~~nor to require the sending, receiving, or delivery of~~
8 ~~any message counseling, aiding, abetting, or encouraging treason~~
9 ~~against the Government of the United States or of this State, or~~
10 ~~other resistance to the lawful authority, or any message calculated~~
11 ~~to further any fraudulent plan or purpose, or to instigate or~~
12 ~~encourage the perpetration of any unlawful act, or to facilitate the~~
13 ~~escape of any criminal or person accused of crime.~~

14 ~~SECTION 1. Section 7904 of the Public Utilities Code is~~
15 ~~repealed.~~

16 ~~SEC. 2. Section 7904 is added to the Public Utilities Code, to~~
17 ~~read:~~

18 ~~7904. (a) A person who owns, operates, or controls facilities~~
19 ~~for providing telecommunications service that interconnects with~~
20 ~~the public switched telephone network shall not intentionally~~
21 ~~interrupt, suspend, or disconnect service to a particular user or to~~
22 ~~a geographic area except in compliance with all of the following:~~

23 ~~(1) Pursuant to an order signed by a magistrate that includes all~~
24 ~~of the following findings:~~

25 ~~(A) That probable cause exists that the service is being or will~~
26 ~~be used for an unlawful purpose or to assist in a violation of the~~
27 ~~law.~~

28 ~~(B) That absent immediate and summary action to interrupt,~~
29 ~~suspend, or disconnect service, serious danger to public health or~~
30 ~~safety will result.~~

31 ~~(C) That interruption, suspension, or disconnection of service~~
32 ~~will not suppress speech that is protected by the First Amendment~~
33 ~~or Section 2 of Article I of the California Constitution, or violate~~
34 ~~any other rights under federal or state law.~~

35 ~~(2) After providing the California Public Utilities Commission~~
36 ~~or the Federal Communications Commission, or both, any required~~
37 ~~notification and complying with any applicable regulation of either~~
38 ~~commission or any other applicable provision of state or federal~~
39 ~~law.~~

~~(b) The Legislature finds and declares that it is a matter of statewide concern to ensure that California users of any telecommunications service that interconnects with the public switched telephone network not have this service interrupted and thereby be deprived of a means to connect with the state's 911 system in an emergency or be deprived of a means to engage in constitutionally protected expression.~~

~~SEC. 3.~~

SEC. 2. Section 7907 of the Public Utilities Code is repealed.

SEC. 3. Section 7907 is added to the Public Utilities Code, to read:

7907. (a) For purposes of this section, the following terms have the following meanings:

(1) "Communications service" means any communications service that interconnects with the public switched telephone network and is required by the Federal Communications Commission to provide customers with 911 access to emergency services.

(2) "Governmental entity" means every local government, including a city, county, city and county, a transit, joint power, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state.

(3) "Interrupt communications service" means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt communications service to one or more particular customers or all customers in a geographical area.

(4) "Judicial officer" means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of any state or federal court located in this state.

(b) No governmental entity and no provider of communications service, or any agent thereof, acting at the request of a governmental entity, shall interrupt communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer that includes all of the following findings:

1 (1) That probable cause exists that the service is being or will
2 be used for an unlawful purpose or to assist in a violation of the
3 law.

4 (2) That absent immediate and summary action to interrupt
5 communications service, significant danger to the public health,
6 safety, or welfare will result.

7 (3) That interruption of communications service will not
8 suppress speech that is protected by the First Amendment to the
9 United States Constitution or Section 2 of Article I of the California
10 Constitution, or violate any other rights under federal or state law.

11 (c) A provider of communications service that intentionally
12 interrupts communications service pursuant to subdivision (b)
13 shall comply with any rule or notification requirement of the
14 commission or Federal Communications Commission, or both,
15 and any other applicable provision or requirement of state or
16 federal law.

17 (d) Good faith reliance upon an order of a judicial officer
18 authorizing the interruption of communications service pursuant
19 to subdivision (b) shall constitute a complete defense against any
20 action brought as a result of the interruption to communications
21 service as directed by that order.

22 (e) The Legislature finds and declares that it is a matter of
23 statewide concern to ensure that California users of any
24 communications service not have that service interrupted, and
25 thereby be deprived of 911 access to emergency services or a
26 means to engage in constitutionally protected expression.